

**Congress of the United States**  
**Washington, DC 20515**

June 22, 2011

The Honorable Kathleen Sebelius  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Donald Berwick, Administrator  
Center for Medicare and Medicaid Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Sebelius:

We write concerning the Centers for Medicare and Medicaid Services' June 1, 2011 decision to reject Indiana's Medicaid State Plan Amendment (SPA) 11-011 to limit funding to Medicaid providers that perform abortions or operate facilities where abortions are performed. We vehemently disagree with your narrow interpretation of Title XIX of the Social Security Act and believe this represents a significant departure from Medicaid's time-honored practice of having the states – not the federal government – maintain reasonable standards for qualified providers. We are disturbed to note that your decision is simply the latest example of this Administration's alarming pattern of usurping states' authority to manage their Medicaid programs in ways that best meet the needs of their citizens.

Indiana's law HEA 1210, which was passed with bipartisan support by the Indiana General Assembly, prevents taxpayer dollars from being given to "any entity that performs abortions or maintains or operates a facility where abortions are performed" except licensed hospitals or ambulatory surgical centers. On May 12, the Indiana Family and Social Services Administration (FSSA) submitted a Medicaid State Plan that reflects changes made by HEA 1210. We fear that your decision could potentially jeopardize future Medicaid services in other states considering similar lawful actions.

Indiana law does not change Medicaid's family planning benefits. It would only change the location at which certain services can be received. Indiana has effectively closed a glaring loophole that has allowed taxpayer dollars to support abortions. In this respect, HEA 1210 ensures full compliance with the spirit of the longstanding and bipartisan federal policy known as the Hyde Amendment. It is equally important to note that any family planning provider in Indiana may receive Medicaid funds for services, if they choose not to perform abortions. However, if they freely determine that abortions are an indispensable part of their business model, they must pursue that model without the support of Hoosiers' tax dollars.

In your recent letter to the State of Indiana, you express your determination that Indiana's SPA 11-011 does not comply with Section 1902(a)(23) of the Social Security Act, which provides that beneficiaries can obtain covered services from any qualified provider willing to

provide such services. We disagree with this conclusion. As CMS made use of less than a quarter of the generous ninety-day review window, it is possible several facts were overlooked. Therefore, we trust that a review of longstanding federal law and legal precedent will assist in a more deliberate and careful evaluation.

Section 1902(a)(23) clearly states that providers must be “qualified to perform the service or services required,” and the federal regulations implementing this statute (42 C.F.R. section 431.51) allow states to set “reasonable standards relating to the qualifications of providers.” Furthermore, we would draw your attention to Section 1902(p)(1) of the Social Security Act which infers that states may exclude certain providers for any reason. This provision’s legislative history, found in Senate Report 100-109, is clear: “This provision is not intended to preclude a State from establishing, under State law, any other bases for excluding individuals or entities from its Medicaid program.”

The judiciary has echoed legislative intent. The First Circuit found in *First Medical Health Plan, Inc. v. Vega-Ramos* that Section 1902(p)(1) “permit[s] a state to exclude an entity from its Medicaid program for any reason established by state law.” We believe that Indiana’s HEA 1210 and SPA 11-011 set reasonable standards and are well within the letter and the spirit of Section 1902 of the Social Security Act.

Indiana has taken steps to ensure “equal access” for Medicaid family planning services. We understand that the Indiana Family and Social Services Administration (FSSA) believes that HEA 1210 will impact 21 counties in Indiana and has already identified approximately 800 qualified provider locations in those same counties where Medicaid patients may receive family planning services. Since hundreds of facilities will still offer these services, Indiana will continue to meet its obligation to provide quality care.

Finally, persistent media reports indicate that the CMS is considering cutting the entirety of Indiana’s federal Medicaid match. We find this particularly disconcerting. We trust that you will not jeopardize care for more than a million Hoosiers over a contentious philosophy. In light of the fact that CMS recently issued an informational bulletin to all states on this issue, we certainly hope that you are not seriously considering jeopardizing care for the nation’s 70 million Medicaid beneficiaries.

We ask for your swift reconsideration of Indiana’s SPA 11-110. We fully support the intent of HEA 1210 to prevent taxpayer dollars from subsidizing the operational costs of abortions. As representatives of diverse constituencies, we are committed to the deep-rooted right of each state to administer its Medicaid program in a manner consistent with the values and needs of her citizens.

Sincerely,



Marlin Stutzman  
Member of Congress



Todd Akin  
Member of Congress



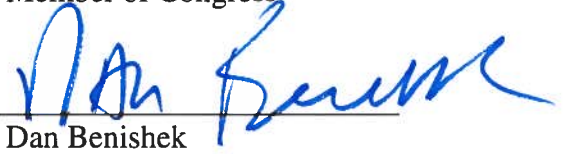
Michele Bachmann  
Member of Congress



Spencer Bachus  
Member of Congress



Roscoe Bartlett  
Member of Congress



Dan Benishek  
Member of Congress



Rob Bishop  
Member of Congress



Diane Black  
Member of Congress



Marsha Blackburn  
Member of Congress



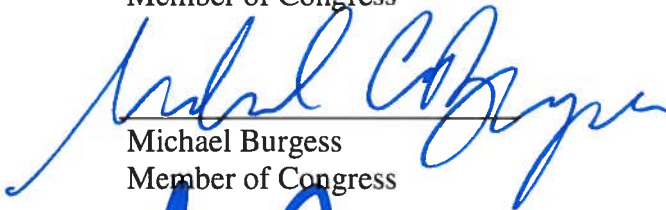
Charles Boustany  
Member of Congress



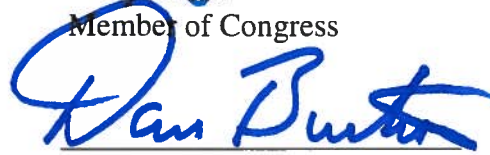
Kevin Brady  
Member of Congress



Larry Bucshon  
Member of Congress



Michael Burgess  
Member of Congress



Dan Burton  
Member of Congress



Francisco Canseco  
Member of Congress



Howard Coble  
Member of Congress




Michael Conaway  
Member of Congress



John Culberson  
Member of Congress



Scott DesJarlais  
Member of Congress



Jeff Duncan  
Member of Congress

Renee S. Ellmers

Renee Ellmers  
Member of Congress

Stephen Fincher

Stephen Fincher  
Member of Congress

Charles Fleischmann

Charles Fleischmann  
Member of Congress

Bill Flores

Bill Flores  
Member of Congress

Virginia Foxx

Virginia Foxx  
Member of Congress

Scott Garrett

Scott Garrett  
Member of Congress

Bob Goodlatte

Bob Goodlatte  
Member of Congress

Ralph M. Hall

Ralph Hall  
Member of Congress

Vicky Hartzler

Vicky Hartzler  
Member of Congress

Blake Farenthold

Blake Farenthold  
Member of Congress

Jeff Flake

Jeff Flake  
Member of Congress

John Fleming

John Fleming  
Member of Congress

Randy Forbes

Randy Forbes  
Member of Congress

Trent Franks

Trent Franks  
Member of Congress

Louie Gohmert

Louie Gohmert  
Member of Congress

Morgan Griffith

Morgan Griffith  
Member of Congress

Gregg Harper

Gregg Harper  
Member of Congress

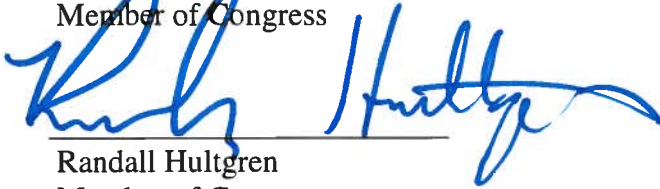
Jeb Hensarling

Jeb Hensarling  
Member of Congress





Tim Huelskamp  
Member of Congress



Randall Hultgren  
Member of Congress



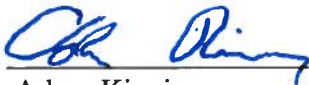
Bill Johnson  
Member of Congress



Walter Jones  
Member of Congress



Mike Kelly  
Member of Congress



Adam Kinzinger  
Member of Congress



Doug Lamborn  
Member of Congress



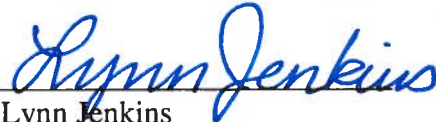
James Lankford  
Member of Congress



Daniel Lipinski  
Member of Congress



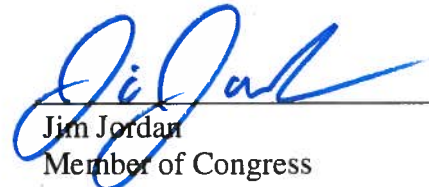
Bill Huizenga  
Member of Congress



Lynn Jenkins  
Member of Congress



Timothy Johnson  
Member of Congress



Jim Jordan  
Member of Congress



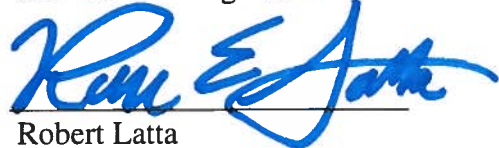
Steve King  
Member of Congress



John Kline  
Member of Congress



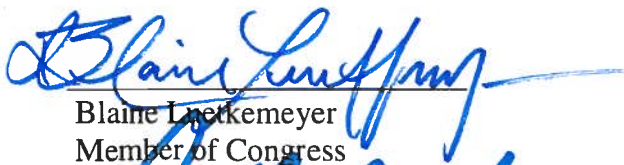
Jeff Landry  
Member of Congress

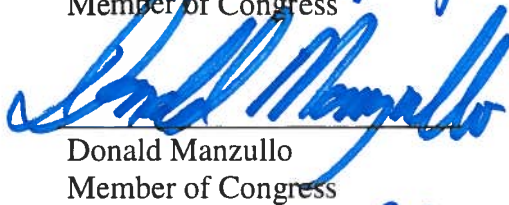


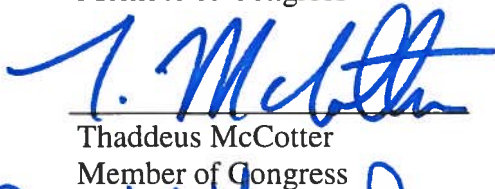
Robert Latta  
Member of Congress

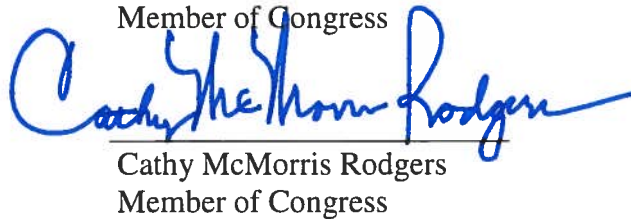


Billy Long  
Member of Congress

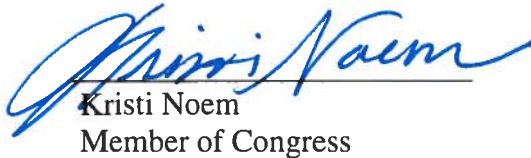
  
Blaine Luetkemeyer  
Member of Congress

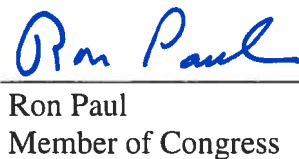
  
Donald Manzullo  
Member of Congress

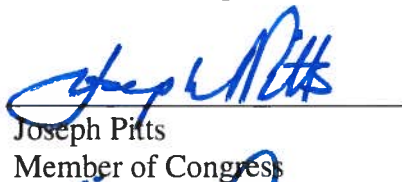
  
Thaddeus McCotter  
Member of Congress

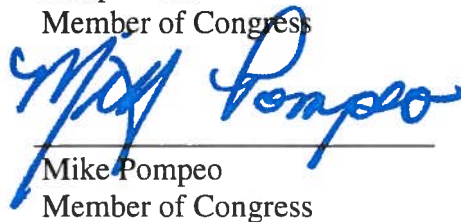
  
Cathy McMorris Rodgers  
Member of Congress

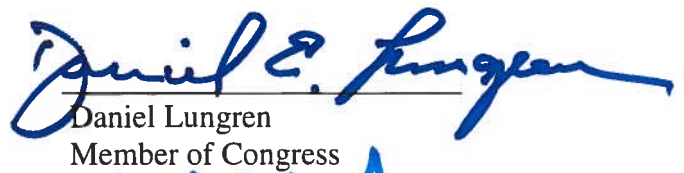
  
Candice Miller  
Member of Congress

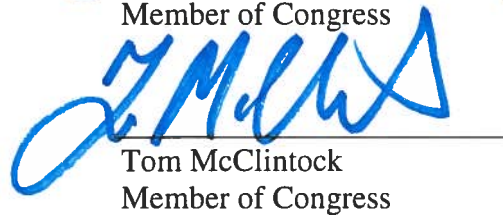
  
Kristi Noem  
Member of Congress

  
Ron Paul  
Member of Congress

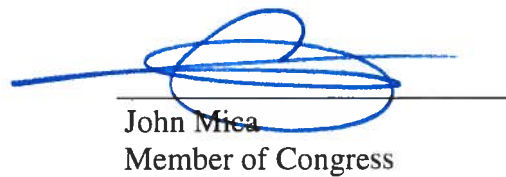
  
Joseph Pitts  
Member of Congress

  
Mike Pompeo  
Member of Congress

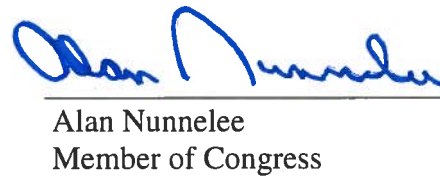
  
Daniel Lungren  
Member of Congress

  
Tom McClintock  
Member of Congress

  
Patrick McHenry  
Member of Congress


  
John Mica  
Member of Congress

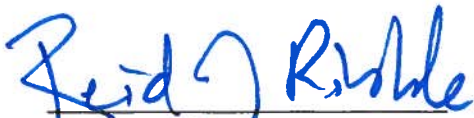
  
Randy Neugebauer  
Member of Congress

  
Alan Nunnelee  
Member of Congress

  
Mike Pence  
Member of Congress

  
Ted Poe  
Member of Congress

  
Bill Posey  
Member of Congress



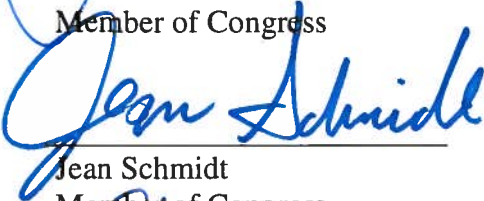
Reid Ribble  
Member of Congress



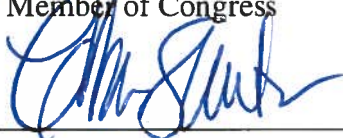
Todd Rokita  
Member of Congress



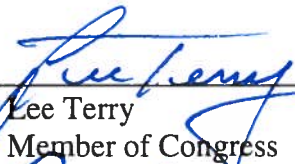
Peter Roskam  
Member of Congress



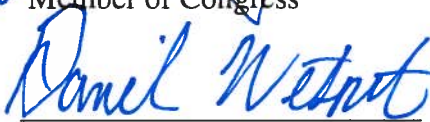
Jean Schmidt  
Member of Congress



Chris Smith  
Member of Congress



Lee Terry  
Member of Congress



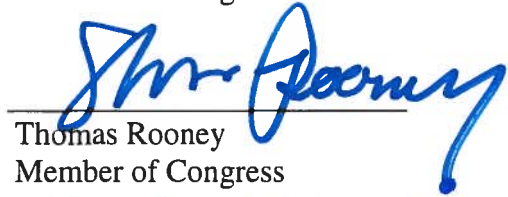
Daniel Webster  
Member of Congress



Todd Young  
Member of Congress



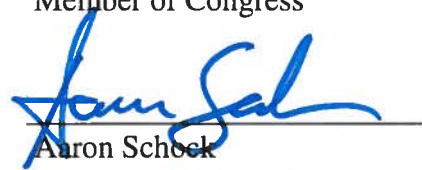
Phil Roe  
Member of Congress



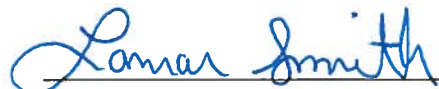
Thomas Rooney  
Member of Congress



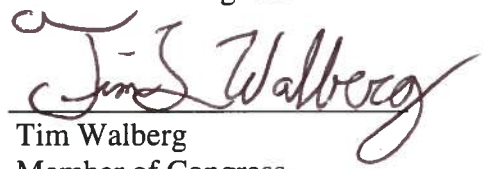
Steve Scalise  
Member of Congress



Aaron Schock  
Member of Congress



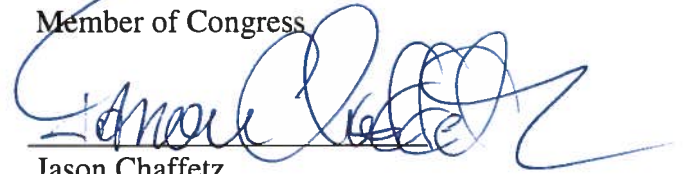
Lamar Smith  
Member of Congress



Tim Walberg  
Member of Congress



Kevin Yoder  
Member of Congress

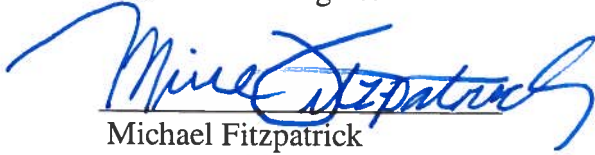


Jason Chaffetz  
Member of Congress

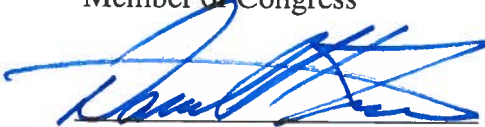




Justin Amash  
Member of Congress



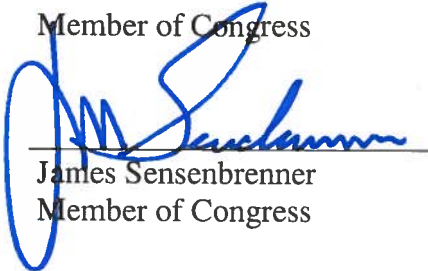
Michael Fitzpatrick  
Member of Congress



Darrell Issa  
Member of Congress



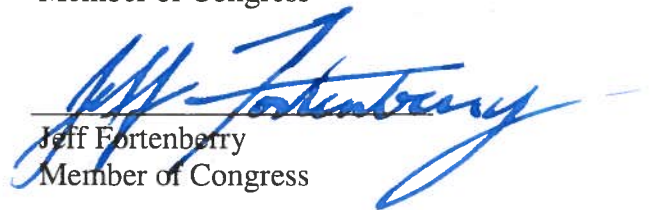
Pete Olson  
Member of Congress



James Sensenbrenner  
Member of Congress



Steve Chabot  
Member of Congress



Jeff Fortenberry  
Member of Congress



Sue Myrick  
Member of Congress



Ileana Ros-Lehtinen  
Member of Congress



Steve Southerland  
Member of Congress